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*Supreme Court of Oregon.*

## COOK v. PRENTICE ET AL.

An innkeeper who receives a piano in his character as innkeeper, and as the property of his guest, is entitled to his lien against the piano for board and lodging furnished his guest, although the piano is in fact the property of a third person.

*Wm. M. Kaiser*, for appellant.

*Wm. M. Ramsay* and *G. G. Bingham*, for respondent.

The opinion of the court was delivered by

LORD, J.—This suit was instituted by the plaintiff, as an innkeeper, to enforce a lien against a piano, put in his possession by the defendant, as his guest, for a debt due for lodging and entertainment. By the facts stipulated, it is admitted that the relation of innkeeper and guest existed between the plaintiff and defendant when the plaintiff, at the request of the defendant, paid the freight charges on the piano, and took it into his custody ; that the piano was in fact the property of a third person, who had consigned it to the defendant to sell on commission : but that the plaintiff did not know it was the property of such third person, but received it in his character as an innkeeper, and as the property of his guest.

Upon this state of facts we are to inquire whether the piano is chargeable with an innkeeper's lien for board and lodging furnished his guest. At common law the liability of an innkeeper for the loss of the goods of his guest is special and peculiar, and, like that of the common carrier, is founded on grounds of public policy. It must not, however, be confounded with that of a common carrier ; the liabilities, though similar, are distinct: *Clark v. Burns*, 118 Mass. 275 ; *Schouler*, Bailm. 259. Whatever controversy may exist in the judicial mind as to the true measure of the innkeeper's responsibility, it cannot be denied that his liability for the loss of the goods of his guest is extraordinary and exceptional: *Schouler*, Bailm. 261, and notes ; *Coggs v. Bernard*, 1 Sm. Lead. Cas. (Am. notes) 401. Compelled to afford entertainment to whomsoever may apply and behave with decency, the law, as an indemnity for the extraordinary liabilities which it imposes, has clothed the innkeeper with extraordinary privileges. It gives him, as a security for unpaid charges, a lien upon the property of his guest, and upon the goods put by the guest into his possession: *Overt. Liens* 129. Nor is the lien confined to property only owned by the guest, but it will

attach to the property of third persons, for whom the guest is bailee, provided only he received the property on the faith of the innkeeping relation: Schouler, Bailm. 292; *Calye's Case*, 1 Sm. Lead. Cas. 249; *Manning v. Hollenbeck*, 27 Wis. 202. But the lien will not attach if the innkeeper knew the property taken in his custody was not owned by his guest, nor had he any right to deposit it as bailee or otherwise, except, perhaps, some proper charge incurred against the specific chattel.

In *Broadwood v. Granara*, 10 Exch. 417, the innkeeper knew that the piano sent to the guest did not belong to him, and did not receive it as part of the guest's goods, and it was on that ground alone he was held not entitled to his lien. But in *Threfall v. Borwick*, L. R., 7 Q. B. 711, where the innkeeper had received the piano as part of the goods of his guest, it was held he had a lien upon it. MELLOR, J., said: "When, having accommodation, he has received the guest, with his goods, and thereby has become liable for their safe custody, it would be hard if he was not to have a lien upon them; and, under such circumstances, the lien must be held to extend to goods which he might possibly have refused to receive." LUSH, J., said: "I am of the same opinion. The innkeeper's lien is not restricted to such things as a travelling guest brings with him in journeying; the contrary has been laid down long ago. It extends to all goods the guest brings with him, and the innkeeper receives as his. If he has this lien as against the guest, the cases have established, beyond all doubt, that he has the same right as against the real owner of the article, if it has been brought to the inn by the guest as owner." To the same effect, QUAIN, J., said: "There is no authority for the proposition that the lien of the innkeeper only extends to goods which a traveller may be ordinarily expected to bring with him. \* \* \* The liability, as shown by the old cases, extends to all things brought to the inn as the property of the guest, and so received,—even a chest of charters or obligations; and why not a piano-forte? If, therefore, the innkeeper be liable for the loss, it seems to follow he must also have a lien upon them. And if he has a lien upon them as against the guest, the two cases cited (and there are more) show that if the thing be brought by the guest as owner, and the landlord takes it in thinking it is the guest's own, he has the same rights against the stranger—the real owner—as against the guest." Upon appeal from the decision of this case, in *Threfall v. Borwick*,

L. R., 10 Q. B. 210, it was held, affirming the decision, that whether the defendant, as innkeeper, was bound to take in the piano or not, having done so he had a lien upon it.

Although there are certain *dicta*, not necessary to the decision, in *Broadwood v. Granara*, *supra*, to the effect that the innkeeper was not bound to receive the piano, yet the real ground of the decision was based on the fact that the innkeeper knew that the piano sent to his guest was the property of a third person, and did not, therefore, receive it as part of his guest's goods, and the right to subject the piano to his lien was denied; but *e converso*, if he had not known the piano was the property of a third person, and had received it as the property of his guest, would not his lien have attached? It is not material whether the innkeeper is bound to receive such property or not, although, it is said, the liability may be well extended, according to the advanced usages of society; yet if he does receive it as the property of his guest, and thereby becomes liable for it, he must be entitled to his lien: *Threfall v. Borwick*, *supra*. Whenever, by virtue of the relation of innkeeper and guest, the law imposes this extraordinary responsibility for the goods of the guest, it gives the innkeeper a corresponding security upon the goods put by the guest into his possession.

It is true that the piano was shipped to the defendant in his name, but he brought it to the inn as his property; or, at least, it was brought there at his request, and upon his order, and put in the custody and possession of the plaintiff as the property of his guest. It is admitted that the plaintiff received it as an innkeeper, and safely kept it as the property of his guest; nor is it doubted but what he would have been liable for its loss; and, in such case, it is difficult to perceive upon what principle of law or justice he can be denied his lien.

The judgment must be affirmed.

THAYER, J. (*dissenting*.)—Upon the main question in the case there is some doubt, in view of the authorities, upon the subject, though, upon a common-sense view, there would not seem to be any. That the man Kane could pledge the appellant's piano for his own hotel bill, or in any way subject it to the payment thereof, would shock all sense of property right. The respondent's counsel, however, have cited numerous cases where such a lien has attached to the property of a third person, and I have no doubt but that such

lien will, in many cases, attach to the property taken by the guest to the inn at which he obtains accommodations, though he be not the owner of it.

But in all such cases, it seems to me, the property must derive some special benefit, or else the owner must have entrusted it to a party under circumstances from which he could reasonably have concluded that the party would become the guest of an inn, and take the property with him there as his own; and I do not think the rule should extend further than this. In the case under consideration it does not appear that the appellant ever knew that Kane was stopping at a hotel. He sent the piano to him at Baker City, to sell upon commission. It does not appear that the respondent furnished the entertainment upon the credit of the piano, or upon the supposition that it belonged to Kane. The latter might, and so far as I can see would, have continued a guest at the hotel the same whether the piano had been sent or not. It is not a case, as I view it, where the owner of the property has clothed another with the *indicia* of ownership, and a third person been deceived thereby into purchasing it, or giving credit upon the faith of such indication. It was purely a business transaction. The appellant was attempting to make sale of his property, and sent it to Kane for that purpose. The latter had no authority in the premises except to exercise the special power conferred, and it does not appear but that the respondent had full knowledge of the facts as the appellant alleged he did in his answer. I am inclined to believe that the burden of proof was upon the respondent to establish that he supposed the piano to belong to Kane, and that he entertained him upon the faith that such was the fact, before he could claim a lien upon it for the hotel bill. The property of one man should not be taken for the debt of another, against the former's consent, unless he has done some act, or neglected some duty, creating the liability. A party cannot be deprived of his ownership of property to satisfy the claim of another, unless he has, in some form, obligated himself to submit to it. He must have agreed to it in terms, or done some act, directly or remotely, authorizing it. I do not think that the pleadings and agreed facts in this case establish that the respondent had any lien upon the piano for the hotel bill against Kane, or for anything beyond the sum advanced by the respondent for the freight and transportation of it, unless it be for its storage; but the instrument has, doubtless, been used sufficiently to offset any sum for stor-

age, and the appellant duly tendered the amount advanced as freight and transportation.

I think the decree should be reversed as to the appellant.

An innkeeper has a lien on the goods and chattels of the guest, *infra hospitium*, for his lodging and refreshment, and for specific charges against the goods and chattels themselves: *Pollock v. Landis*, 36 Ia. 651; *Thompson v. Lacy*, 3 B. & Ald. 283; *Domestic Sewing Machine Co. v. Watters*, 50 Ga. 573; and cases *infra*.

There are *dicta* to the effect that the innkeeper's lien formerly attached to the person of the guest and to the wearing apparel and ornaments upon the person: *Dunlap v. Thorne*, 1 Rich. (S. C.) 213; *Grinnell v. Cook*, 3 Hill (N. Y.) 485; *Newton v. Trigg*, 1 Show. R. 269. But the doctrine, if it ever had any foundation in authority, is now exploded: *Grinnell v. Cook*, *supra*; *Sunbolf v. Alford*, 3 M. & W. 248; s. c. 1 Horn. & Hurl. 13; *Wolf v. Summers*, 2 Camp. 631.

A boarding-house keeper has no lien on the boarder's effects unless specially given by contract or statute: *Hursh v. Byers*, 29 Mo. 469; *Ewart v. Stark*, 8 Rich. (S. C.) 423; *Bayley v. Merrill*, 10 Allen 360; *Brooks v. Harrison*, 41 Conn. 184; *Pollock v. Landis*, 36 Ia. 651; Sch. Bail. 294.

A contract to pay so much per week does not make the relation that of boarder and boarding-house keeper, where the length of time the guest is to stay is not an element of the contract: *Berkshire Woollen Co. v. Proctor*, 7 Cush. 417. "The distinction between a guest and a boarder seems to be this: 'The guest comes without any bargain *for time*, remains without one, and may go when he pleases, paying only for the actual entertainment which he receives; and it is not enough to make a boarder, and not a guest, that he has stayed a long time in the inn in this way.' " *Shoecraft v. Bailey*, 25 Ia. 553, citing 1 Pars. Cont. 628; Story Bail. § 477.

The innkeeper's lien will not attach unless the goods are received by one in his capacity as innkeeper: *Fox v. McGregor*, 11 Barb. 41; *Ingallsbee v. Wood*, 33 N. Y. 577; *Binns v. Pigot*, 9 Car. & P. 208; *Orchard v. Rackstraw*, 9 M., G. & S. 698; *Miller v. Marston*, 35 Me. 153.

In *Grinnell v. Cook*, 3 Hill (N. Y.) 485, it is said: "The inquiry then is whether the plaintiff received and kept the horses as an innkeeper. In other words was he bound to receive and take care of them, and would he have been answerable for the loss, if the horses had been stolen without any negligence on his part? The lien and the liability must stand or fall together. Innkeepers cannot claim the one with any just expectation of escaping the other."

In addition to the intimation in the above opinion, it was said by PARKER, B., in *Broadwood v. Granara*, 10 Exch. 417, that the innkeeper's lien would only cover such goods as the innkeeper was bound to receive; but the better opinion seems to be that it will attach to all goods and chattels actually received by one as innkeeper, though he may not have been bound to receive them: *Berkshire Woollen Co. v. Proctor*, 7 Cush. 417; *Threfall v. Borwick*, L. R., 7 Q. B. 711; affirmed 10 Id. 210.

The innkeeper's lien extends to the horses and carriage of the guest, both for specific charges against the same and for the guest's personal entertainment: *Fox v. McGregor*, 11 Barb. 41; *Pollock v. Landis*, 36 Ia. 651; *Mason v. Thompson*, 9 Pick. 280; *McDaniels v. Robinson*, 26 Vt. 316; *Calye's Case*, 1 Sm. Lead. Cas. 131; Story Bail., § 476. And where horses and carriage are left with one as innkeeper, the owner becomes a guest for the purposes of this lien, though he lodge at another place: *Yorke v. Gren-*

*ough*, 2 Ld. Raym. 866 ; s. c. 1 Salk. 388 ; *McDaniels v. Robinson*, 26 Vt. 316. In *Peet v. McGraw*, 25 Wend. 653, the court said, " Besides it is not necessary in point of fact that the owner or person putting the horses to be kept at a public inn should be a guest [lodger ?] at the time, in order to charge the innkeeper or to entitle him to the right of lien. \* \* \* If the horses be left with the innkeeper, though the owner may put up at a different place, the former is answerable for the safe keeping, and should of course be entitled to the summary remedy for his reasonable charges."

It has been held that where a guest brings a horse and wagon to an inn where he has been stopping, the lien will attach for the previous entertainment of the guest as well as for subsequent expenses of himself and horse : *Mulliner v. Florence*, 3 Q. B. D. 484.

Where an innkeeper is also a liveryman, in which latter capacity he receives a horse, no lien will arise in his favor against the horse, because the owner afterwards becomes a guest at his house : *Smith v. Dearlove*, 6 M., G. & S. 132.

The lien of the innkeeper may be extended to cover advances made to the guest on credit of his effects : *Watson v. Cross*, 2 Duvall (Ky.) 147 ; *Proctor v. Nicholson*, 7 Car. & P. 67.

An innkeeper has a lien on the goods and chattels of a third person, lawfully in the possession of his guest and received *infra hospitium*, provided he has no knowledge that the property does not belong to his guest : *Fox v. McGregor*, 11 Barb. 41 ; *Manning v. Hollenbeck*, 27 Wis. 202 ; *Grinnell v. Cook*, 3 Hill 485 ; *Yorke v. Grencaugh*, 2 Ld. Raym. 866 ; s. c. 1 Salk. 388 ; *Threfall v. Borwick*, L. R., 7 Q. B. 711 ; *Turrill v. Crawley*, 13 Id. 197.

If the innkeeper knows that the property belongs to a person other than the guest, he has no lien on it for the guest's expenses, though he might, perhaps, be entitled to a lien for specific charges

against the property itself : *Broadwood v. Granara*, 10 Exch. 417 ; *Johnson v. Hill*, 3 Starkie 172 ; *Domestic Sewing Machine Co. v. Watters*, 50 Ga. 573. And in *Snead v. Watkins*, 37 Eng. L. & Eq. 384 ; s. c. 1 C. B. (N. S.) 267, the principle of allowing an innkeeper's lien against the goods of a third person in the guest's possession seems to be limited to such articles as a guest might ordinarily travel with.

Where a father and two daughters stopped at an inn, it was held that the innkeeper had a lien on the baggage of one of the daughters for her own entertainment only, and not for that of the other two : *Clayton v. Butterfield*, 10 Rich. (S. C.) 300. As to the liability of a wife's baggage for her husband's entertainment, see *Case v. Fogg*, 46 Mo. 44 ; *Mulliner v. Florence*, 3 Q. B. D. 484.

If the innkeeper voluntarily allows the guest to depart with his goods, his lien is gone, and it will not again attach for the former debt, upon the owner's again putting the goods *infra hospitium* and becoming a guest : *Jones v. Pearle*, 1 Strange 556 ; 3 Pars. Cont. 249. But the departure of a guest for a short time, *animo revertendi*, or permitting the guest to take a horse away simply to exercise it, will not release the lien : *Allen v. Smith*, 12 C. B. (N. S.) 638 ; *Caldwell v. Tutt*, 10 Lea (Tenn.) 258 ; *Grinnell v. Cook*, 3 Hill 485.

The taking of a fraudulent draft in payment of the guest's bill will not release the innkeeper's lien : *Manning v. Hollenbeck*, 27 Wis. 202. And where a boarder paid his bill and sold his goods to another without the boarding-house keeper's knowledge, the goods were held liable for the subsequent board of the boarder with whom they were left, under a statute giving a lien to boarding-house keepers : *Bayley v. Merrill*, 10 Allen 360.

Unless special power of sale is conferred upon the innkeeper by statute, he

must enforce his lien by bill in chancery: *Fox v. McGregor*, 11 Barb. 41; 2 Kent Com. 642.

If he sell the property without such power and without judicial proceedings (except by custom of London and Exeter), he loses his lien and is liable in trover for the value of the property: *Case v. Fogg*, 46 Mo. 44; *Doane v. Russell*, 3 Gray 282; *Mulliner v. Florence*, 3 Q. B. D. 484; *Jones v. Pearle*, 1 Strange 556; *Chase v. Westmore*, 5

*Maule & S.* 185; *Calve's Case*. 1 Sm. Lead. Cas. 131.

It seems that an innkeeper is not entitled to compensation for storing goods held by him under lien: *Somes v. British Emp. Shipping Co.*, 8 H. L. Cas. 338. As to what is sufficient notice of sale to guest under statutory power of sale, see *Brooks v. Harrison*, 41 Conn. 184.

CHARLES A. ROBBINS.

Lincoln, Neb.

*United States Circuit Court, W. D., Texas.*

WINN v. GILMER.

The citizenship of a party moving from one state into another is controlled by the intention in that regard with which he takes up his residence in the new place.

A party who has moved from one state into another cannot avail himself of the jurisdiction of a federal court upon the claim of being a non-resident, after showing by his acts and declarations, before the litigation commenced, an intention of becoming a citizen in his new place of abode.

SUIT for debt.

*Leo. Tarleton*, for plaintiff.

*Houston Bros.*, for defendant.

The opinion of the court was delivered by

TURNER, J.—“Citizenship,” as used in the law under consideration, means residence with intention of remaining permanently at that place. A man may reside in a state for an indefinite period of time without becoming a citizen, but the moment a man takes up his residence in a state different from that where he formerly was domiciled or was a citizen, with intent and purpose of making the new place of residence his future permanent home, that moment he loses his former domicile, and becomes domiciled in the new place; or, in other words, he ceases to be a citizen of the former place of residence, and becomes a citizen of the state of his adoption.

The question for me to decide is whether Mr. Winn, the plaintiff, and his assignor, from whom he claims a part of his alleged right of action at the time this suit was instituted, were citizens of Texas. I put the question this way, because, if not citizens of